UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

----oo0oo----

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMR MOHSEN and ALY MOHSEN,

Defendants.

CASE NO. CR. 03-0095 WBS

ORDER RE: DEFENDANT'S MOTION TO SUPPRESS COPIES OF HIS JAIL MAIL

----oo0oo----

Defendant Amr Mohsen ("Defendant") moves to suppress the copies of his personal mail that have been provided to the government by authorities at two Alameda County Jails since June 2004.

I. Factual and Procedural Background

On March 25, 2003, a 19-count indictment was filed charging defendant with one count of conspiracy to obstruct justice and to commit perjury in violation of 18 U.S.C. § 371 (Count 1), four counts of perjury in violation of 18 U.S.C. § 1621 (1) (Counts 2-5), one count of subornation of perjury in

violation of 18 U.S.C. § 1622 (Count 10), eight counts of mail fraud in violation of 18 U.S.C. § 1341 (Counts 11-18), and one count of obstruction of justice in violation of 18 U.S.C. § 1503 (Count 19). The trial of these charges was originally scheduled for March 31, 2004 before Judge Alsup. (Pl.'s Mem. in Opp'n to Def.'s Mot. to Disqualify 6.) On March 27, 2004, defendant was arrested based upon information that he was planning to flee the country. (Id.) On March 29, 2004, Judge Alsup ordered defendant to be detained in the Santa Rita jail pending trial. (Id.)

While defendant was detained at the Santa Rita jail, an inmate contacted law enforcement and reported that defendant wanted him to facilitate acts of murder and witness intimidation. (Def.'s Mot. to Suppress Jail Cell Evidence Ex. B (Application & Aff. for a Search Warrant ¶¶ 4, 5, 18).) The government subsequently requested that jail authorities copy all of defendant's non-legal mail and deliver those copies to the government. (USA's Mem. in Opp'n to Suppress Jail Mail 2.) The government began receiving defendant's correspondence on June 3, 2004; the earliest mail the government has received was dated May 26, 2004. (Id.)

On July 27, 2004, the grand jury issued a superseding indictment charging defendant with contempt of court in violation of 18 U.S.C. § 401(3) (Count 20), attempted witness tampering in violation of 18 U.S.C. § 1512(b)(1) (Count 21), solicitation to commit arson in violation of 18 U.S.C. § 373 (Count 22), and solicitation to commit the murder of a federal judge in violation of 28 U.S.C. § 373 (Count 23). Defendant now moves to suppress his jail mail, arguing that the interception and copying of his

mail violated his First and Fourth Amendment rights and occurred in violation of the Santa Rita Jail's own policies. (Def.'s Mot. to Suppress Jail Mail 1, 2.)

II. Discussion

In a line of cases beginning with Stroud v. United States, 251 U.S. 15, 21 (1919), the courts have deferred to prison authorities in finding that legitimate penological interests justify the examination of a inmate's communications.[1] See, e.g., United States v. Whalen, 940 F.2d 1027, 1035 (7th Cir. 1991) ("[B]ecause of their reasonable concern for prison security and inmates' diminished expectations of privacy, prison officials do not violate the constitution when they read inmates' outgoing letters." (quoting United States v. Brown, 878 F.2d 222, 225 (8th Cir. 1989)(emphasis added)))[2]; United States v. Vallez, 653 F.2d 403, 406 (9th Cir. 1981) ("The warrantless seizure of a sealed letter from a prisoner's cell therefore violates the fourth amendment, unless it serves a 'justifiable purpose of imprisonment or prison security.'")(quoting United States v. Savage, 482 F.2d 1371, 1373 (9th Cir. 1973)); Savage, 482 F.2d at 1373 ("[A]bsent a showing of some justifiable purpose of imprisonment or prison security the interception and photocopying

---

[1] Stroud had a somewhat expansive holding. Since it was decided, Stroud has been limited to the proposition for which it is cited herein. United States v. Whalen, 940 F.2d 1027 (7th Cir. 1991)("Modern cases have limited Stroud to situations in which prison officials have seized outgoing letters in the exercise of legitimate government interests.").

[2] The court notes that although defendant has asserted that his First Amendment rights were violated by the government's seizure of his jail mail, he has not supported this conclusory statement with any argument. The court declines to research and determine an issue that defendant has not meaningfully raised.

of the [inmate's] letter [by prison officials] was violative of the fourth amendment . . . .").

The interception and copying of defendant's mail in this case served a "legitimate penological purpose." After receiving information from a confidential informant that defendant was attempting to harass witnesses and solicit murder, the government had reason to suspect that defendant was engaging in illegal activity. (Def.'s Mot. to Suppress Jail Cell Evidence Ex. B (Application & Aff. for a Search Warrant ¶¶ 5, 18).) To prevent defendant from using the mails to commit new offenses, to keep the jail from becoming the locus of criminal conduct, and to ensure order and security within the jail, the government monitored defendant's mail. (USA's Mem. in Opp'n to Mot. to Suppress Jail Mail 2-3.)

In Thornborough v. Abbott, 490 U.S. 401, 412 (1989), the Supreme Court noted that outgoing correspondence may implicate the authorities' interest in prison security if involves "escape plans, plans relating to ongoing criminal activity, and threats of blackmail or extortion." See also Witherow v. Paff, 52 F.3d 264, 266 (9th Cir. 1995) ("Preventing prisoners from disseminating offensive or harmful materials [through the mail] clearly advances the orderly administration of prisons, the rehabilitation of prisoners, and the security of those receiving the materials."). Here, defendant's mail may have been the vehicle for criminal activity or may have included plans relating to ongoing criminal activity and threats. In fact, the government states that it "may introduce numerous letters that the defendant sent while in prison . . . as direct

evidence of guilt on the charged offenses . . . ." (USA's Mem. in Opp'n to Mot. to Suppress Jail Mail 2.) Therefore, monitoring and copying of defendant's mail served a legitimate penological purpose and thus did not offend the Constitution.

Furthermore, because he has not established that a Constitutional violation occurred, defendant has no grounds to ask for suppression of the letters. The exclusionary rule operates to exclude evidence that was obtained, whether directly or indirectly, through an illegal search and seizure. Segura v. U.S., 468 U.S. 796, 804 (1984). As explained above, the seizure of defendant's mail was not illegal or unconstitutional. Courts often admit evidence properly derived from viewing an inmate's jail mail. See United States v. Workman, 80 F.3d 688, 699 (2d Cir. 1996); Whalen, 940 F.2d at, 1034-35; Stroud, 251 U.S. at 21-22; People v. Garvey, 99 Cal. App. 3d 320, 324 (1980).

Defendant also argues that the government's interception and copying of his mail occurred in violation of the jail's policies, but similarly fails to explain how such a violation would merit exclusion of evidence. Defendant claims that because the rules state that "[a]ll mail will be opened and inspected for contraband," government authorities should not have copied the mail to be used as evidence at trial. (Def.'s Mot. to Suppress Jail Mail.) As the government points out, correspondence related to an ongoing scheme to threaten witnesses would fall under the term "contraband." In addition, even if the jail authorities contravened their own regulations, this would not amount to a Constitutional violation. The Ninth Circuit has held that "[a]bsent a constitutional violation or a

congressionally created remedy, violation of an agency regulation does not require suppression of evidence." United States v. Ani, 138 F.3d 390, 392 (9th Cir. 1998) (citing United States v. Hensel, 699 F.2d 18 (1st Cir. 1983)). Therefore, suppression of defendant's mail seized during his imprisonment is not warranted.

Finally, there is no merit to defendant's argument that there is no longer good cause for continuing to copy defendant's mail after he was transferred to the Dyer Detention Center and placed in Administrative Segregation. (Def.'s Reply 2.) Simply because defendant no longer has contact with other inmates does not mean that can no longer solicit help from others. To the contrary, an argument can be made that because he no longer has contact with other inmates he is more likely to solicit help through communications with people on the outside.

IT IS THEREFORE ORDERED that defendants' motion to suppress his jail mail be, and the same hereby is, DENIED.

DATED: December 22, 2005

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE